



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Jno. Q. McAdams,
Commissioner,
State Department of Banking
Austin, Texas

Dear Mr. McAdams:

Opinion No. 0-5894

Re: Discretionary authority of the Commissioner of Banking to approve plans submitted by corporations operating under Article 1524a with respect to insurance policies in connection with mortgage loans pledged through a corporate trustee.

Your inquiry touching the above subject-matter is as follows:

"The Investors Syndicate and Investors Syndicate of America, Inc., domiciled in Minneapolis, Minnesota are authorized to do business in Texas pursuant to the provisions of Article 1524a. Each of the corporations named is regularly examined by representatives of this department.

"In connection with a recent examination a question arose regarding the discretionary authority of the Commissioner in respect to a proposed amendment to a trust agreement filed by subject corporation which would permit said corporation to furnish insurance policies in connection with mortgage loans pledged as collateral security and held by a corporate trustee of this state, containing a loss payable clause in favor of the Investors Syndicate or its assigns. Our letter of

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date January 13th which is attached touches upon the subject matter.

"We are also enclosing two original letters received from Mr. Edward M. Burke, Assistant to General Counsel for subject corporation, one dated February 18th and another dated February 21st, the latter suggesting an alternative plan which embraces a certification as to insurance coverage being maintained in connection with a given loan.

"We should like advice as to whether or not the Commissioner in his discretion could approve either one of the plans submitted by Mr. Burke. * * *."

Section 7 of Article 1524a, Vernon's Civil Statutes, dealing with loan and brokerage companies, insofar as pertinent, is as follows:

"All bonds, notes, certificates, debentures, or other obligations sold in Texas by any corporation affected by a provision of this Act shall be secured by securities of the reasonable market value, equaling at least at all times the face value of such bonds, notes, certificates, debentures or other obligations. If such corporation sells in Texas bonds, notes, certificates, debentures or other obligations upon which it receives installment payments, such bonds, notes, certificates, debentures and other obligations shall be secured at all times by securities having the reasonable market value equal to the withdrawal or cancellation value of such obligations outstanding. Said securities shall be placed in the hands of a corporation having trust powers approved by the Banking Commissioner of Texas as Trustee under a trust agreement, the terms of which shall be approved in writing by the Banking Commissioner of Texas, or at the option of any such corporation which sells in Texas bonds, notes, cer-

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tificates, debentures or other obligations upon which it receives installment payments, such corporation may upon application to, and approval by, the Banking Commissioner of Texas deposit securities having a reasonable market value equal to the withdrawal or cancellation value of such obligations outstanding with the State Treasurer of Texas in lieu of such deposits with a Trustee as set forth hereinabove, provided that, in the event such deposit is made with the State Treasurer of Texas in lieu of such Trustee: (1) Such corporation shall file a certified statement of reserve liability and detailed list of securities so deposited, semi-annually with the Banking Commissioner of Texas, which certification shall be made by a Certified Public Accountant, who shall be approved by and be satisfactory to the Banking Commissioner. The corporation shall pay a fee of Fifteen (\$15.00) Dollars for filing each such statement. (2) Said securities shall be deposited with the State Treasurer under a trust agreement, the terms of which shall be approved by the Banking Commissioner."

Briefly stated, the plans submitted by counsel for the particular companies involved are as follows:

1. The company will furnish the depository with a certificate as follows:

"Loan No. _____ Name _____

"This is to certify that adequate fire insurance protection is being maintained in connection with the above loan, and said insurance is being held by the Investors Syndicate of Minneapolis, Minnesota."

2. An amendment to the trust agreement deleting the requirement with respect to the furnishing of the assignments with the policies and inserting a requirement to

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the effect that the company furnish a certificate similar to the form quoted above.

There is a broad discretion lodged in the Banking Commissioner in Section 7 above quoted with respect to the securities to be pledged by a loan and brokerage company. That discretion, however, is not an arbitrary one, but is that discretion that should be exercised by an executive or administrative officer charged with the duty of approving such securities as collateral to the company's outstanding obligations to the public. The statute requires such securities to be "of the reasonable market value, equal at least at all times the face value of such bonds, notes, certificates, debentures, or other obligations", where such obligations have been sold and paid for, and in cases where such obligations have been sold on installment payments "by securities having the reasonable market value equal to the withdrawal or cancellation value of such obligations outstanding." The statute thus makes the reasonable market value of the securities deposited the measure of securities required of the issuing and depositing corporations. What that reasonable market value is, has been factually submitted to the determination of the Banking Commissioner for his official approval.

Now, the plans proposed by the particular companies under consideration contemplate the deposit of notes secured by mortgage or other lien upon improved real estate, which character of instruments undoubtedly could be eligible and adequate under the test of reasonable market value of such note and lien. But where, as is usually the case, the value of the note is materially affected by the value of the buildings upon the land mortgaged, necessarily an insurance policy in favor of the holder of such paper would be an essential element in appraising the market value of the note, and consequently the adequacy of the security of which it was a part.

We are therefore of the opinion the suggestions of counsel for the companies should not be followed, for this would be to accept the personal liability of the company in lieu of the securities required by law.

Very truly yours

ATTORNEY GENERAL OF TEXAS
By

Ocie Speer
Assistant



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